

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RYAN JAMES JOHNSON,

Plaintiff,

v.

M. KENDRICK and R. FOWLDS,

Defendants.

Case No. 1:20-cv-00992-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE WITHOUT PREJUDICE FOR
FAILURE TO PROSECUTE

14-DAY DEADLINE

ORDER TO ASSIGN TO DISTRICT JUDGE

Plaintiff Ryan James Johnson initiated this action as a state prisoner by filing a pro se civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). For the reasons set forth below, the undersigned recommends that the District Court dismiss this action consistent with the Court's Local Rule for Plaintiff's failure to prosecute this action. Specifically, Plaintiff failed to keep the Court apprised of a current address.

BACKGROUND

On April 14, 2023, the undersigned issued a screening order, which was mailed to Plaintiff at his address of record. (Doc. No. 9; *see also* docket). On May 5, 2023 the mail was returned "undeliverable, inmate paroled, inactive." (*See* docket). Plaintiff's change of address was due no later than July 13, 2023. Local Rule 183(b). Plaintiff has not filed an updated

1 address as required by Local Rule 182(f) and the time to do so has expired. *See* docket.

2 **APPLICABLE LAW AND ANALYSIS**

3 Plaintiff was obligated to keep this Court informed of his proper address. Specifically:

4 [a] party appearing *in propria persona* shall keep the Court and
5 opposing parties advised as to his or her current address. If mail
6 directed to a plaintiff *in propria persona* by the Clerk is returned by
7 the U.S. Postal Service, and if such plaintiff fails to notify the Court
and opposing parties within sixty-three (63) days thereafter of a
current address, the Court may dismiss the action without prejudice
for failure to prosecute.

8 Local Rule 183(b); *see also* Local Rule 182(f) (all parties are “under a continuing duty” to notify
9 the clerk of “any change of address[.]”). Plaintiff was notified of his obligation to keep the Court
10 informed of his address and advised that the Court would dismiss an action without prejudice if
11 Plaintiff does not update his address within sixty-three (63) days. (Doc. No. 3, VII.B.).

12 Precedent supports a dismissal of a case when a litigant does not keep the court apprised on his
13 address. *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988) (affirming lower court and finding no
14 abuse of discretion when district court dismissed case without prejudice after pro se plaintiff did
15 not comply with local rule requiring pro se plaintiffs keep court apprised of addresses at all
16 times); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal proper for failure to
17 prosecute and comply with local rules of court); *Hanley v. Opinski*, 2018 WL 3388510 (E.D. Ca.
18 July 10, 2018) (dismissing action for failure to prosecute and to provide court with current
19 address); *Davis v. Kern Valley State Prison*, 2023 WL 2992980, at *1, n. 1 (E.D. Cal. Apr. 18,
20 2023). More than sixty-three (63) days have passed since the Court’s April 14, 2023 Order was
21 returned as undeliverable, and Plaintiff has not filed a notice of change of address.¹

22 Accordingly, it is **ORDERED**:

23 The Clerk of Court is directed to assign this case to a district judge for consideration of
24 these findings and recommendations.

25 It is further **RECOMMENDED**:

26 This case be dismissed without prejudice pursuant to Local Rule 183(b) for Plaintiff’s

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¹ As of the date of these Findings and Recommendations ninety-six (96) days have passed since the mail was
returned as undeliverable.

failure to prosecute this action.

NOTICE TO PARTIES

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, a party may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: August 9, 2023

Helena M. Barch-Kuchta
HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE